IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RSA 229 of 2007.

Date of decision August 2, 2007

Ajmer …**Appellant.**

Versus

Sunder Singh and another …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the appellant: **Mr. B.S.Attri, Advocate.**

For the Respondents: **Mr. Ramakant Sharma, Advocate.**

Dev Darshan Sud, J. (Oral).

This is the plaintiff's second appeal against the judgment and decree of the two Courts below dismissing his suit for declaration with the consequential relief of permanent prohibitory injunction restraining the defendants from interfering in the suit land. The plaintiff sued the defendants on the allegations that defendant No. 1 Sunder Singh who is the owner of the suit land approached the plaintiff –

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

appellant in the year 1992 with a request that a sum of Rs.50,000/- be given to him as he was in dire need of money. It was further pleaded that this factum of oral transaction was reported to the *patwari halqua* on 20.7.1992 and Report No. 356 was recorded and mutation No. 290 regarding the factum of mortgage with possession was also recorded. This mutation was rejected by the Assistant Collector, IInd Grade, holding that since the transaction was not registered, no entry could be made in the revenue record.

The suit was resisted by the defendants on a number of grounds. Defendant No. 1 also pleaded that the plaintiff, in connivance with the patwari, to whom he was supplying milk regularly, was responsible for making revenue entries etc. against the interest of the defendants.

The learned trial Court on the crucial issue of whether the suit land had been mortgaged and the plaintiff put in possession of the land, held that there was no evidence on record to establish these allegations of the plaintiff. In appeal, the learned District Judge, after a detailed consideration of the documents and evidence on record, affirmed the findings of the

learned trial Court. The plaintiff is in second appeal before this Court.

Notice of the appeal was issued to the respondents and the record of the Courts below was also perused.

Learned counsel for the appellant submits that Ex. P-1 which is the *Rapat Rojnamcha* purportedly evidencing the mortgage is admissible in evidence without formal proof and constitutes an admission having been made on the part of the defendants that the land had been mortgaged with possession with the plaintiff. He submits that substantial question of law No. 1 as formulated viz. whether the construction of document Ex.P-1 i.e. Rojnamcha Rapat entered in the relevant record is public document and as such is admissible in evidence without adducing formal proof, and filed with the grounds of appeal requires consideration of this Court.

This submission of the learned counsel cannot be accepted as the transaction being one relating to immovable property and of the value of more than Rs.100/- was compulsorily registrable. The *Rapat Rojnamcha* cannot take the place of formal deed of

mortgage requiring registration. In these circumstances, this appeal is dismissed. There shall be no order as to costs.

August 2, 2007 (PC). (Dev Darshan Sud),J.